

ARTICLE 11

**COMMITTEE ON TOWN ORGANIZATION & STRUCTURE (CTO&S)
REPORT & RECOMMENDATION**

RECOMMENDATION:

By a vote of 6–0–0 the Committee on Town Organization and Structure recommends FAVORABLE ACTION on the Article 11 motion offered by the Advisory Committee.

SUMMARY:

Article 11 was placed on the warrant by the Committee on Town Organization and Structure (CTO&S) to address concerns about the challenges faced by the Select Board as it considers an increasing number of warrant articles. Article 11 proposes to amend the Town's General Bylaws to provide a consistent, realistic, and feasible long-term framework for the process by which the Select Board and Advisory Committee review warrant articles and make recommendations to Town Meeting. The objective is to ensure that key articles are vetted thoroughly, and that Town Meeting has information that will help it to consider and vote on warrant articles. Article 11 also includes some “housekeeping” amendments to make the current bylaws consistent and to clarify the requirements for public hearings. Finally, Article 11 would extend the time between the closing of the warrant and the start of the Annual (May) Town Meeting so that the Select Board, Advisory Committee, and other committees would have more time to consider the increased number of warrant articles.

What Article 11 Does

- Gives the Select Board the flexibility not to make a recommendation on every warrant article. (The key change is inserting the words “if any” regarding recommendations.)
- Reaffirms the requirement that the Select Board and Advisory Committee (or one of its subcommittees) hold public hearings on all warrant articles.
- Lists five types of articles as priorities for Select Board recommendations: articles that (1) have been submitted by a Town department, board, committee, or commission; (2) request action by the Massachusetts state legislature; (3) propose to amend any Town by-law; (4) authorize or require the Town to enter binding agreements; or (5) involve any appropriation of funds.
- Makes Section 2.5.2 of the General Bylaws consistent with Section 2.2.6 as amended by Town Meeting in November 2020. (Those amendments, which allow the Advisory Committee to consider “any or all” warrant articles and to make “reports or recommendations,” are in effect but as of May 17, 2023, had not yet been included in the General Bylaws as posted on the Town website.)
- Makes a technical correction to the requirement that committees that make

- recommendations to Town Meeting on warrant articles must hold public hearings on those warrant articles. The current language would require a committee that is not required to make a recommendation to Town Meeting to hold a public hearing even if it were voting only on whether to consider an article. Article 11 would retain the requirement that there be a public hearing before any vote to make a recommendation to Town Meeting.
- Extends the period between the closing of the warrant and the first night of the Annual Town Meeting from 75 to 90 days to give the Select Board, Advisory Committee, and other committees more time to review the increasing number of warrant articles.

BACKGROUND:

Article 11 is a response to the problem of “too many warrant articles, too little time.”

From May 2018 until November 2022, the average number of warrant articles per Town Meeting (37.8), was 50% higher than the average number for Town Meetings between May 2001 and November 2017 (25.2). The number of articles for the May 2023 Annual Town Meeting (including the one article for the Special Town Meeting) is only 26. It is too early to say whether the May 2023 Town Meeting is an outlier or the beginning of a trend.

For the May 2022 and November 2022 Town Meetings, the Select Board decided not to offer reports with recommendations for every article in the warrant. Instead, it offered no recommendation on one-third or more of the warrant articles. The Select Board then submitted Article 5 for the November 2022 Town Meeting. That article would have removed the requirement that the Select Board prepare reports stating its recommendation for *all* articles in the warrant for a Town Meeting.

Town Meeting voted 162–79–11 to refer the subject matter of Article 5 of the November 2022 Town Meeting to CTO&S, which had proposed referral and agreed to study the matter further with the objective of submitting a warrant article on this topic for the May 2023 Town Meeting. Although the vote to refer Article 5 took place before Town Meeting had considered the climate change articles submitted by the Zero Emissions Advisory Board (ZEAB), many Town Meeting members agreed that Town Meeting would have had more information and the process for considering the ZEAB articles—particularly Articles 26, 28, and 29—would have been better if the Select Board had held hearings and made recommendations on each of those articles.

For a more detailed discussion of the concerns that led the Select Board to submit Article 5 for the November 2022 Town Meeting and the reasons why Town Meeting voted to refer the subject matter of that article to CTO&S, see the petitioner’s explanation of Article 11 (pp. 1-2 – 11-15 of the Combined Reports for the May 2023 Annual Town Meeting:

<https://www.brooklinema.gov/DocumentCenter/View/41369/ARTICLE-11---SB-and-AC-recomms-and-hearings>).

DISCUSSION:

How Article 11 Gives the Select Board Discretion to Focus on the Most Important Articles

By inserting “if any” after “recommendations” Article 11 eliminates the requirement that the Select Board “prepare written reports, stating their recommendations and the reasons therefore, for all articles.” This change also will reduce the burden on Town staff who participate in the drafting of the Select Board’s reports to Town Meeting. If there is no recommendation, such reports can be brief.

The Importance of Public Hearings

One key aspect of Article 11 is to reaffirm that the Select Board and Advisory Committee (or an Advisory Committee subcommittee) must hold a public hearing on each warrant article, even if no recommendation is ultimately offered. In CTO&S public hearings, there was strong support for this provision of Article 11.

Public hearings on warrant articles serve many purposes, including:

- Providing an opportunity for public input.
- Alerting the Select Board or Advisory Committee to potential controversies and helping those bodies decide which articles should receive significant further consideration.
- Making petitioners aware of potential problems or concerns with their articles.
- Educating the broader public about what is on the warrant and issues associated with particular articles. (Select Board hearings, in particular, serve this purpose, because the Select Board has a high profile as a body that is elected by a town-wide vote and its hearings are broadcast by Brookline Interactive Group.)
- Acknowledging that the petitioner has put in the necessary effort to submit a warrant article and thus deserves a hearing.

The legal requirements for public hearings are flexible, so the Select Board or Advisory Committee can reduce the time devoted to public hearings by, for example, imposing time limits. CTO&S Member Richard Benka consulted Town Counsel on this matter. See the petitioner’s explanation for more details.

Why Are Five Categories of Warrant Articles Identified as Priorities for Select Board Recommendations?

The five categories are closely related to the Select Board's role as the executive branch of Town government. One or more of the following is usually true of articles in the five categories:

- 1) The Select Board is directly or indirectly responsible for placing the article on warrant and therefore has an obligation to explain the article to Town Meeting.
- 2) The Select Board (the Town's executive branch) or its staff has unique and important information, expertise, or experience (e.g., regarding funding or implementation of a new bylaw) that it should share with Town Meeting.
- 3) The Select Board has a responsibility to implement the provisions of a warrant article (e.g., a Home Rule Petition request, a binding agreement, or a new bylaw) and thus has an important perspective on that article.

Some warrant articles fall into other categories, including resolutions on global or national issues. Under Article 11, the Select Board would have the option of offering reports with recommendations on such articles, but the proposed bylaw would not prioritize such articles.

All five of the proposed categories rely on objective criteria. It will be clear whether articles fall into these categories. For example, either an article amends a bylaw or it does not. In this sense, the criteria are different from criteria that the Select Board used in 2022 during that body's experiment with the idea of not preparing reports with recommendations on all warrant articles. For example, the Select Board said it would consider articles that were likely to be "controversial," but it is not always easy to predict which articles will be controversial and whether something is controversial or not can be a subjective judgment.

Note that Article 11 only provides guidance and expectations regarding these five categories. It does not mandate that the Select Board offer reports with recommendations on all articles in these categories.

What Are the Technical/Housekeeping Changes in Article 11?

First, Section 2.5.2 of the General Bylaws would be amended to remove the requirement that the Advisory Committee offer reports with recommendations on all warrant articles. The November 2020 Town Meeting amended Section 2.2.6 (formerly numbered 2.2.5) to eliminate that requirement, but the language of Section 2.5.2 remained unchanged.

Second, Article 3.22 would be amended so that committees that make recommendations to Town Meeting would have to hold a public hearing only when they make such recommendations, not when they take any vote regarding a warrant article. The current

language could require a committee that is not required to make a recommendation to nonetheless hold a hearing before it voted on whether to even consider a warrant article.

Extension of the Interval between the Closing of the Warrant and the Start of Town Meeting from 75 to 90 Days

During the consideration of Article 11 by the Select Board, Advisory Committee, and CTO&S, there was discussion of the advantages and disadvantages of extending the period between the closing of the warrant and the start of Town Meeting from the current 75 days to 90 days. Article 11 as filed proposed such an extension for all Town Meetings so that the Select Board, Advisory Committee, and other committees would have more time to consider the increasing number of articles.

One concern about the proposed change was that a 90-day interval between the closing of the warrant and the start of the November Special Town Meeting would mean that the warrant would close in mid-August. Because Town staff might be on vacation then, petitioners might not have the opportunity to consult with staff about the need for and details of any potential warrant articles. Such consultations can be very important when petitioners are trying to decide whether and how to file a warrant article. In addition, during August, when many Brookline residents are on vacation, petitioners might find it more difficult to work with one another or to obtain the necessary signatures for their warrant articles. The “too many warrant articles, too little time” problem also tends to be more acute for the Annual (May) Town Meeting, which must consider the annual budget.

The Advisory Committee’s recommended Article 11 motion thus extends the interval to 90 days only for the (May) Annual Town Meeting, leaving it at 75 days for Special Town Meetings, which are usually held in November but can be convened at other times. CTO&S concurs with this recommendation and supports the Advisory Committee’s motion. CTO&S notes that closing the warrant 90 days before the start of the May Town Meeting would mean that the warrant would close at or toward the end of the February school vacation, depending on the calendar for that year. In recent years, the Advisory Committee has sometimes held subcommittee hearings during school vacation week. Even if it did not, the Advisory Committee and Select Board could use the extra time provided by a 90-day interval to get an earlier start on scheduling hearings on warrant articles and departmental budgets.

There also has been discussion of whether extending the interval to 90 days for the Annual Town Meeting would mean that the warrant, including the annual budget article (Article 7 for the May 2023 Annual Town Meeting), would close before a newly elected governor had filed their state budget. Under state law, the governor must file a state budget no later than the fourth Wednesday in January, but for a newly elected governor the deadline is extended by five weeks. For example, Governor Healey did not file the fiscal 2024 state budget until March 1.

There are several ways in which the 90-day interval could be reconciled with a new governor’s decision to file a state budget after the usual deadline.

First, the Select Board would have the option of waiving the deadlines for the closing of the warrant. Article 11 would not change Section 2.1.4, which allows such waivers.

Second, the Select Board could opt to have the annual budget considered by a Special Town Meeting within the Annual Town Meeting. The Select Board already follows this procedure when it files a warrant article with budget adjustments for the November Town Meeting.

Third, the annual budget article (Article 7 in the May 2023 Town Meeting warrant) is currently filed largely as a “placeholder” article that includes language that allows the Advisory Committee to file a budget motion with specific appropriation amounts long after the warrant has closed. The budget article can thus be updated as more information about the state budget becomes available.

The 90-day interval also might mean that other committees, including the Community Preservation Committee, would not be able to provide complete information on recommended appropriations or other matters at the time of the closing of the warrant. In such cases, as with the Town budget warrant article as currently submitted for the warrant, a “placeholder” article could be placed on the warrant, giving the Community Preservation Committee (or others) more time to prepare recommendations to Town Meetings.

Requirement that the Select Board Explain Why It Has Not Offered A Recommendation

Another issue that generated discussion during consideration of Article 11 was the requirement that the Select Board offer an explanation for not making a recommendation on a warrant article. There are at least two reasons for thinking that this burden would not be excessive. First, in most cases it should be easy to state a reason such as, “The article is on a question of U.S. foreign policy on which the Select Board does not have special expertise and is not directly relevant to Brookline town government.” Second, the Select Board could simply invoke the language of Article 11 and state that it is not offering a recommendation because the article does not fall into one of the five priority categories.

What Happens if Article 11 Fails?

- The current bylaw that requires the Select Board to prepare reports and recommendations on *all* warrant articles would remain in effect.
- Sections 2.5.2 and 2.2.6 of the General Bylaws would not be consistent regarding the responsibilities of the Advisory Committee to consider and report on warrant articles.
- The warrant would close 75 days, not 90 days, before Annual Town Meetings.
- The technical correction to Article 3.22 (public hearings) would not be made.

RECOMMENDATION:

By a vote of 6–0–0 taken on May 10, 2023, the Committee on Town Organization and Structure recommends FAVORABLE ACTION on the Article 11 motion offered by the Advisory Committee.